IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12375 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHMMAD HANIF BABUBHAI SAIYED

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA S DUTTA for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 19.06.2003 passed by the Police Commissioner, City of Ahmedabad, against him, in exercise of powers under Section 3(1) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 19.6.2003.

2. The grounds served upon the petitioner and as placed on record indicate that the detaining authority took into consideration two aspects in passing the order of detention. Firstly, registration of crimes against the petitioner on 17.6.2003 under Sections 66(b), 65(a)(e), 116(1)(b), 81, 98, 99 and 116 of the Bombay Prohibition Act, whereby foreign liquor worth of Rs. 1,79,400/- was seized from the possession of the petitioner. The detaining authority secondly relied upon two in-camera statements as recorded by the sponsoring authority on 17.6.2003 and verified by the detaining authority on 18.6.2003, revealing the incidents of 12.5.2003 and 18.5.2003. From the above material, the impugned order came to be passed by the detaining authority against the petitioner.

3. Learned Advocate Ms.Banna Dutta for the petitioner and learned AGP Mr.R.M.Chauhan for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of on the sole ground whether the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind to the vital aspect of the matter. From the grounds served upon the petitioner, it is apparent that the petitioner was on police remand when the order came to be passed and served upon the petitioner. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was on police remand, but on remand period being over, he was likely to be surrendered to the judicial custody. The detaining authority also further reached to the subjective satisfaction that on so surrendering, the petitioner was likely to move bail application and he was likely to be released on bail and was likely to continue the illegal activities. Now the question is whether there was any material before the detaining authority to come to this conclusion. On verifying the record and scrutinising the grounds, it is found that there was no material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail from the

judicial custody on remand period being over. The facts of the case are squarely covered by a decision of the Apex Court in the matter of AMRUTLAL & OTHERS, VS. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675. On going through the record, it is found that there was no cogent material available with the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail. Therefore, the detaining authority did not take into consideration the vital aspect of the matter. The order impugned in this petition therefore is required to be quashed on the is ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 19.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair